

EL DORADO COUNTY
2015-2016 GRAND JURY
REPORT



AMERICANS WITH DISABILITIES ACT
COUNTY COMPLIANCE

CASE 15-07 • JUNE 2, 2016

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The Americans with Disabilities Act (ADA) is a comprehensive civil rights legislation prohibiting discrimination and ensuring that people with disabilities¹ have the same opportunities to participate in the mainstream of American life — to enjoy employment opportunities, to purchase goods and services, and to participate in state and local government programs and services.

California is one of the most ADA compliant states in the nation. It is also the most ADA litigious. Examples abound where litigation has resulted in public entities becoming saddled with significant and ongoing costs to address ADA deficiencies. The City of Sacramento recently settled such a lawsuit where considerable municipal funds are now earmarked annually for years into the future to address those defects. Hence, a diligent effort is necessary to comply with the law and the spirit of ADA.

BACKGROUND

President George H. W. Bush signed the Americans with Disabilities Act (ADA) into law on July 26, 1990. It is built upon the foundation laid by Section 504 of the Rehabilitation Act of 1973. While Section 504 applies only to entities receiving federal financial assistance, the ADA covers all state and local governments, including those that receive no federal financial assistance. The ADA also applies to private businesses that meet the ADA definition of public accommodation², commercial facilities³, and many private employers⁴. While the ADA has five separate Titles⁵, Title II specifically applies to state and local governments and the programs, services and activities they deliver. The Department of Justice Civil Rights Division is the key agency responsible for enforcing Title II, and coordinating other federal agencies' enforcement activities under Title II⁶.

¹ The ADA defines disability as a mental or physical impairment that substantially limits one or more major life activities.

² A few examples of public accommodations would be restaurants, hotels, movie theaters, and doctor's offices.

³ Office buildings, factories and warehouses would be considered commercial facilities.

⁴ Private employers with 15 or more employees are covered under Title I of the Americans with Disabilities Act.

⁵ Title I Employment, Title II State and Local Government, Title III Public Accommodations and Commercial Facilities, Title IV Telecommunication, Title V Miscellaneous Provisions

⁶ http://www.ada.gov/ada_title_ii.htm

On July 26th, 2010 the Department of Justice released updated regulations for Titles II and III of the Americans with Disabilities Act of 1990. The new regulations set minimum scoping and technical requirements that govern the construction and alteration of facilities covered by the ADA. Adoption of the 2010 standards⁷ established a revised reference point for Title II entities choosing to make structural changes to existing facilities to meet their program accessibility requirements.

When the start date for construction was on or after March 15, 2012, all newly constructed or altered state and local government facilities were required to comply with the 2010 standards. Before that date, the 1990 standards or the 2010 standards were used for projects when the start of construction commenced on or after September 15, 2010, but before March 15, 2012.

METHODOLOGY

The grand jury reviewed:

- Americans with Disabilities Act Title II regulations
- Department of Justice 2010 ADA Standards for Accessible Design
- ADA Best Practices Tool Kit for State and Local Governments
- County 1993 ADA Title II transition plan
- County ADA public notice information and grievance procedure
- Other California county ADA information including their public notice and grievance procedure

The grand jury interviewed:

- Relevant County Managers/Directors

⁷ <http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards.pdf>

DISCUSSION

A key element of Title II mandates physical access to government facilities via reasonable accommodation without discrimination. ADA requirements can be particularly evident where mobility issues must be accommodated, including alternatives to stairs, unimpeded pathways, renovated restrooms, locations of parking, etc. El Dorado County government owns or leases approximately 100 facilities that fall under this requirement.

Title II also contains administrative requirements and outlines the steps public entities should take to achieve compliance, including development of a transition plan for structural changes, self-evaluation for compliance and designation of an individual to oversee compliance.

TRANSITION PLAN

A transition plan outlines the steps the county will take, or are taking, to comply with the word and intent of the ADA. At a minimum, the plan must contain:

1. Identification of physical obstacles limiting the accessibility of the county's programs or activities for individuals with disabilities.
2. A detailed description of the methods that will be used to make the programs or facilities accessible.
3. A specific schedule for taking the necessary steps to achieve compliance. If the transition period is longer than one year, identification of the steps that will be taken during each year of the transition period.
4. Designation of the official responsible for implementation of the plan.

The county's General Services Director developed a 600-page Title II transition plan in 1992 that was adopted by the board of supervisors in July of 1993. It is unknown what, if any, actions occurred as a result of this early plan.

The county contracted with a construction management firm in 2012 to provide a conditions assessment of the county's primary⁸ facilities. This assessment identified the overall risks and needs for each facility, not just ADA compliance. The county also contracted with an ADA compliance consulting firm to provide ADA compliance consulting services. From the information provided by these two firms, the county has developed a multi-year capital improvement work plan.

NOTE: The focus of the 2012 assessment was limited to the county's primary facilities. The current work plan is not comprehensive enough to meet the county's ADA transition plan requirements noted above.

⁸ Approximately 20 of the county's facilities are considered primary because they make up close to 60% of the county's total facilities footage.

COMPLIANCE SELF-EVALUATION

The self-evaluation process documents the actions being taken by a government agency to ensure that its programs are accessible to people with disabilities. It must include a review of all programs, services, or activities offered to the public. The self-evaluation should analyze the nature of each program to determine its accessibility and describe the measures needed to provide access. It should also include an assessment of the county's current ADA related policies, practices and procedures.

In January 1993, the county's board of supervisors received a self-evaluation report and authorized staff to proceed with the implementation of its recommendations with existing resources or develop a cost estimate for review during fiscal year 1993-1994 budget deliberations. The grand jury was unable to locate this self-evaluation survey. It is unknown what, if any, follow up occurred as a result.

The grand jury was unable to find any overall county policies, practices or procedures related to county-wide ADA responsibilities, other than the public notice document and the grievance procedure discussed later in this report. Individual departments may have specific documentation, but, departmental management was not interviewed for this report.

ADA COORDINATOR

The regulations require state and local governments with fifty or more employees designate an employee responsible for coordinating compliance with ADA requirements. There are many benefits to having a knowledgeable ADA coordinator.

An ADA coordinator makes it easy for members of the public to identify someone available to help with questions and concerns about disability discrimination. For example, the ADA coordinator is often the main contact when someone wishes to request an auxiliary aid or service for effective communication, such as a sign language interpreter or Braille documents.

An ADA coordinator also benefits state and local government entities providing a specific contact person having knowledge and information about the ADA so staff questions can be answered efficiently and consistently. In addition, she or he coordinates compliance measures and can be instrumental in ensuring that compliance plans move forward.

El Dorado County has designated a senior department analyst in the Facilities Division of the Chief Administrative Office as the county's ADA coordinator. He is responsible for following up on complaints submitted using the Facilities Division ADA access issues web form⁹, publishing and managing the county's ADA grievance procedure, and providing public notice including relevant

⁹ http://www.edcgov.us/Facilities/WebForms/Contact_Information.aspx

information regarding Title II of the ADA and how it applies to the county's programs, services and activities.

The grand jury found it difficult to locate the ADA access issues web form on the county's website even with the foreknowledge of its existence. It was located on the Facilities Division web page. It is unlikely that the general public would know to look at the facilities section of the county website for ADA access issues, especially if their issue is not facility related.

Throughout the county, individual departmental staff address ADA regulations specific to the services their department provides. For example, the county's risk manager is responsible for employment related ADA questions or concerns. Any inquiries received by the ADA coordinator that are not facilities related are forwarded to the appropriate departmental management level staff.

The county's public notice process includes posting an ADA notice with the grievance procedure at the entrances of county facilities. The grand jury found that not all facilities had these postings, and, that the grievance procedure is outdated. Neither is available on the county website, and it's unknown if either is provided to the public at time of service, such as employment applicants, recipients of social services, or members of citizens' advisory committees.

Various county meeting agendas include a statement with contact information for those that may require accommodation to participate in the public meeting. This notification is not consistently included on all county sponsored public meeting agendas.

The grand jury reviewed other California counties' ADA information, including their public notice and grievance procedure. The counties reviewed included Placer, Sonoma, Nevada and Marin. In that review, comprehensive county ADA information was easily located. Navigation to the ADA information was either available as a link on all of the county's web pages, as part of the header or footer, or provided in multiple drop down menu options such as *Services and Information* or *How Do I?*

FINDINGS

- F1. The county does not have a current ADA transition plan.
- F2. The county does not have a current ADA self-evaluation.
- F3. The county does not have a county-wide approach to ADA compliance including supporting policies, procedures and training.
- F4. The county ADA access issues complaint web form is difficult for the public to locate.
- F5. The county ADA public notice distribution is inadequate.
- F6. The county ADA grievance procedure is outdated.

RECOMMENDATIONS

- R1. The county should formalize the facilities assessment information and capital improvement work plan into an ADA transition plan including any facilities not already addressed in the current work plan.
- R2. The county should complete an ADA self-evaluation.
- R3. The county should develop county-wide ADA policies, procedures, and employee training.
- R4. The county should improve the ADA complaint web form and overall ADA web presence.
- R5. The county should review and update the ADA information yearly.

REQUEST FOR RESPONSES

Responses to both findings and recommendations in this report are required by law in accordance with California Penal Code §933 and §933.05 from the El Dorado County Board of Supervisors before September 7, 2016.

Address responses to:

The Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd.
South Lake Tahoe, CA 96150

The Presiding Judge of the El Dorado County Superior Court additionally requests that responses be sent electronically as a *Word* or *PDF* file to facilitate the economical and timely distribution of such responses. Please email responses to El Dorado County Grand Jury reports to courtadmin@eldoradocourt.org.

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.